

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Homeland Security, Utilities, and Public Policy, to which was referred Senate Bill No. 247, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 2, delete lines 27 through 42, begin a new paragraph and insert:
2 "SECTION 3. IC 5-14-1.5-6.1, AS AMENDED BY P.L.235-2005,
3 SECTION 84, IS AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2006]: Sec. 6.1. (a) As used in this section,
5 "public official" means a person:
6 (1) who is a member of a governing body of a public agency; or
7 (2) whose tenure and compensation are fixed by law and who
8 executes an oath.
9 (b) Executive sessions may be held only in the following instances:
10 (1) Where authorized by federal or state statute.
11 (2) For discussion of strategy with respect to any of the following:
12 (A) Collective bargaining.
13 (B) Initiation of litigation or litigation that is either pending or
14 has been threatened specifically in writing.
15 (C) The implementation of security systems.
16 (D) The purchase or lease of real property by the governing
17 body up to the time a contract or option to purchase or lease is
18 executed by the parties.
19 However, all such strategy discussions must be necessary for
20 competitive or bargaining reasons and may not include
21 competitive or bargaining adversaries.
22 (3) For discussion of the assessment, design, and implementation

of school safety and security measures, plans, and systems.

(4) Interviews with industrial or commercial prospects or agents of industrial or commercial prospects by the Indiana economic development corporation, the office of tourism development, the Indiana finance authority, or economic development commissions.

(5) To receive information about and interview prospective employees.

(6) With respect to any individual over whom the governing body has jurisdiction:

(A) to receive information concerning the individual's alleged misconduct; and

(B) to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is:

(i) a physician; or

(ii) a school bus driver.

(7) For discussion of records classified as confidential by state or federal statute.

(8) To discuss before a placement decision an individual student's abilities, past performance, behavior, and needs.

(9) To discuss a job performance evaluation of individual employees. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.

(10) When considering the appointment of a public official, to do the following:

(A) Develop a list of prospective appointees.

(B) Consider applications.

(C) Make one (1) initial exclusion of prospective appointees from further consideration.

Notwithstanding IC 5-14-3-4(b)(12), a governing body may release and shall make available for inspection and copying in accordance with IC 5-14-3-3 identifying information concerning prospective appointees not initially excluded from further consideration. An initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of prospective appointees must be conducted at a meeting that is open to the public.

(11) To train school board members with an outside consultant about the performance of the role of the members as public officials.

(12) To prepare or score examinations used in issuing licenses,

certificates, permits, or registrations under IC 15-5-1.1 or IC 25.

(13) To discuss information and intelligence intended to prevent, mitigate, or respond to the threat of terrorism.

(c) A final action must be taken at a meeting open to the public.

(d) Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

(e) A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this subsection.

SECTION 4. IC 5-14-3-4, AS AMENDED BY P.L.210-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential by federal law.

(4) Records containing trade secrets.

(5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.

(6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(10) Application information declared confidential by the ~~twenty-first century research and technology fund board of the~~ **Indiana economic development corporation** under ~~IC 4-4-5.1-~~ **IC 5-28-16.**

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(12) A Social Security number contained in the records of a public agency.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the Indiana economic development corporation, the Indiana ~~development~~ finance authority, ~~the film commission, the Indiana business modernization and technology corporation,~~ or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the Indiana ~~development~~ finance authority, ~~the Indiana film commission, the Indiana business modernization and technology corporation,~~ or

economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1.

However, this subdivision does not apply to that information

required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of the donor's identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing medical advisory board regarding the ability of a driver to operate a motor vehicle safely. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes:

(A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2;

- 1 (B) vulnerability assessments;
- 2 (C) risk planning documents;
- 3 (D) needs assessments;
- 4 (E) threat assessments;
- 5 (F) **intelligence assessments**;
- 6 (G) domestic preparedness strategies;
- 7 ~~(G)~~ (H) the location of community drinking water wells and
- 8 surface water intakes;
- 9 ~~(H)~~ (I) the emergency contact information of emergency
- 10 responders and volunteers;
- 11 ~~(I)~~ (J) infrastructure records that disclose the configuration of
- 12 critical systems such as communication, electrical, ventilation,
- 13 water, and wastewater systems; and
- 14 ~~(J)~~ (K) detailed drawings or specifications of structural
- 15 elements, floor plans, and operating, utility, or security
- 16 systems, whether in paper or electronic form, of any building
- 17 or facility located on an airport (as defined in IC 8-21-1-1) that
- 18 is owned, occupied, leased, or maintained by a public agency.
- 19 A record described in this clause may not be released for
- 20 public inspection by any public agency without the prior
- 21 approval of the public agency that owns, occupies, leases, or
- 22 maintains the airport. The public agency that owns, occupies,
- 23 leases, or maintains the airport:
- 24 (i) is responsible for determining whether the public
- 25 disclosure of a record or a part of a record has a reasonable
- 26 likelihood of threatening public safety by exposing a
- 27 vulnerability to terrorist attack; and
- 28 (ii) must identify a record described under item (i) and
- 29 clearly mark the record as "confidential and not subject to
- 30 public disclosure under IC 5-14-3-4(b)(19)(J) without
- 31 approval of (insert name of submitting public agency)".
- 32 This subdivision does not apply to a record or portion of a record
- 33 pertaining to a location or structure owned or protected by a
- 34 public agency in the event that an act of terrorism under
- 35 IC 35-47-12-1 or an act of agricultural terrorism under
- 36 IC 35-47-12-2 has occurred at that location or structure, unless
- 37 release of the record or portion of the record would have a
- 38 reasonable likelihood of threatening public safety by exposing a
- 39 vulnerability of other locations or structures to terrorist attack.
- 40 (20) The following personal information concerning a customer
- 41 of a municipally owned utility (as defined in IC 8-1-2-1):
- 42 (A) Telephone number.

- 1 (B) Address.
- 2 (C) Social Security number.
- 3 (21) The following personal information about a complainant
- 4 contained in records of a law enforcement agency:
- 5 (A) Telephone number.
- 6 (B) The complainant's address. However, if the complainant's
- 7 address is the location of the suspected crime, infraction,
- 8 accident, or complaint reported, the address shall be made
- 9 available for public inspection and copying.
- 10 (c) Nothing contained in subsection (b) shall limit or affect the right
- 11 of a person to inspect and copy a public record required or directed to
- 12 be made by any statute or by any rule of a public agency.
- 13 (d) Notwithstanding any other law, a public record that is classified
- 14 as confidential, other than a record concerning an adoption, shall be
- 15 made available for inspection and copying seventy-five (75) years after
- 16 the creation of that record.
- 17 (e) Notwithstanding subsection (d) and section 7 of this chapter:
- 18 (1) public records subject to IC 5-15 may be destroyed only in
- 19 accordance with record retention schedules under IC 5-15; or
- 20 (2) public records not subject to IC 5-15 may be destroyed in the
- 21 ordinary course of business."
- 22 Page 3, delete lines 1 through 16.
- 23 Renumber all SECTIONS consecutively.
- (Reference is to SB 247 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 8, Nays 0.

Senator Wyss, Chairperson